

DEPARTMENT OF STATE REVENUE

Information Bulletin #85
Income Tax
January 2014
(Replaces Bulletin #85 Dated January 2003)
Effective Date: January 1, 2014

SUBJECT: Nominee Withholding Procedures for Small Business Corporations, Partnerships, and Fiduciaries

REFERENCES: [IC 6-3-4-12](#); [IC 6-3-4-13](#); [IC 6-3-4-15](#)

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SUMMARY OF CHANGES

This version of the bulletin has been changed from the previous version to clarify withholding requirements for certain corporations related to nonresident shareholders and partners.

WITHHOLDING REQUIREMENTS

Small business corporations (as defined in Section 1361 of the Internal Revenue Code), partnerships, trusts, and estates must withhold Indiana adjusted gross income tax from certain payments or credits of income to nonresidents. For those nonresidents who have opted out of the corporation's or partnership's composite tax return or are not included in the composite filing, the withholding agent must report the net income and tax withheld from this income on Form WH-18, Indiana Miscellaneous Withholding Tax Statement for Nonresidents. For those nonresidents that remain on the composite return, withholding will be remitted on Form IT-6WTH and no WH-18 will be provided.

Withholding is required when:

- A small business corporation pays or credits Indiana income amounts to any of its non-Indiana resident shareholders as taxable dividends or undistributed taxable income that was not previously taxed ([IC 6-3-4-13](#));
- A partnership pays or credits Indiana income amounts to any of its non-Indiana resident partners on their distributive shares of partnership income ([IC 6-3-4-12](#)), unless the partner is a foreign corporation qualified to do business in Indiana; or
- A trust or an estate (fiduciary) distributes Indiana income (except income attributable to interest or dividends) to a non-Indiana resident beneficiary ([IC 6-3-4-15](#)).

The nonresident shareholder, partner, or beneficiary is entitled to claim credit for the withheld tax when filing the proper Indiana return.

NOMINEE WITHHOLDING PROCEDURES

If a small business corporation, partnership, or fiduciary withholds tax from income distributions to a nonresident small business corporation, partnership, or fiduciary that in turn passes through the income to a nonresident shareholder, partner, or beneficiary, the original withholding agent may designate the ultimate nonresident recipient as a "nominee" recipient, who may then claim the withheld Indiana tax.

Example:

Indianapolis Partners, Ltd., an Indiana partnership, distributes \$1,000 of Indiana-source rental income to one of its partners, the Ohio Revocable Trust located in Columbus, Ohio. The Ohio Revocable Trust is a simple trust that distributes all current income to the sole beneficiary, John Jones, a resident of Ohio. Indianapolis Partners, Ltd., must withhold \$34 (3.4% of \$1,000) from the distribution to the Ohio Revocable Trust.

Indianapolis Partners, Ltd., may designate John Jones as the "nominee" recipient of the income distribution on Form WH-18. The Form WH-18 must show the names and addresses of both the Ohio Revocable Trust and John Jones. The federal identification number of the trust must appear in the recipient's block next to the trust's name and address, and John Jones's Social Security number must appear in the block specified for

"Recipient's Federal ID or SS Number."

Following the end of the partnership's tax year, Indianapolis Partners, Ltd., provides Copy B and Copy C of Form WH-18 to the Ohio Revocable Trust. The trust provides Copy C to John Jones for filing with his IT-40PNR. John Jones reports the \$1,000 rental income on his IT-40PNR. The trust reports the \$1,000 income and \$1,000 distribution deduction on the federal fiduciary return, Form 1041. The trust's Indiana fiduciary return (IT-41) reports no taxable income due to distributions. The trust must enclose a copy of the Form WH-18 showing the "pass through" of the withheld income tax to John Jones.

NOTE: If there is more than one partnership or fiduciary between the withholding agent and ultimate beneficiary, the withholding agent may complete Form WH-18 to reflect the initial distribution and nominee beneficiary as if there were no intermediary entities. Intermediary entities must attach a copy of the Form WH-18 to their returns to show the ultimate nominee beneficiary.

Example:

Smith Farms, Inc., an Indiana S corporation, distributes \$10,000 of Indiana source farm income to the Estate of Mary Smith, an Illinois shareholder. The Estate of Mary Smith in turn distributes the income to two Illinois trusts, the Smith Marital Trust and the Smith Credit Trust. The two trusts in turn distribute the income to Sam Smith, also a resident of Illinois.

Smith Farms, Inc., would complete Form WH-18 showing the Estate of Mary Smith and Sam Smith as the nominee recipient. The Estate of Mary Smith and the two trusts would each file Form IT-41 with a copy of the Form WH-18. Sam Smith would report the \$10,000 of Indiana source income on his IT-40PNR and claim credit for the \$340 of withheld tax.

Example:

Partnership A provides S corporation B with a WH-18 indicating amounts of Indiana state tax withheld. S corporation B does not claim the withholding credit and passes the credit through to its shareholders. Proper withholding credit is reflected by each S corporation B shareholder on the Indiana K-1.

S corporation B must enclose Copy A of the WH-18 with its Indiana IT-20S return. If the S corporation has withholding liability in addition to the pass-through withholding, S corporation B must issue a WH-18 to each of its nonresident shareholders for this additional income only. This amount should be included on the IT-20S-COMP or IT-65COMP.

ADDITIONAL INFORMATION

For additional information regarding Indiana nonresident withholding requirements, please refer to Income Tax Information Bulletin #28, "Application of State and County Adjusted Gross Income Tax to Residents with Out-of-State Income and Non-Residents with Indiana Source Income," as well as Income Tax Information Bulletin #72, "S Corporation and Partnership Mandate to File a Composite Return on Behalf of Nonresident Shareholders and Partners." Both bulletins are available online at <http://www.in.gov/dor/3650.htm>.

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Commissioner

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